

## **ARTICLE XIII-A NON-CONFORMING USE OF LANDS AND/OR STRUCTURES**

### **Section 1301-A Purpose of Regulation**

Within the districts established by this Ordinance, it is recognized that the following residentially, commercially and industrially zoned properties exist:

1. Undeveloped lots as defined in this Ordinance;
2. Buildings and structures; and
3. Buildings and premises in combination which were lawful before this Ordinance was adopted, but which would be prohibited, regulated, or restricted under the terms of this Ordinance. To eliminate as many of the elements of undue hardship as possible in such cases, it is the intent of this Ordinance to permit these non-conformities to continue until they are removed, but not to encourage their survival

### **Section 1302-A Non-Conforming Structure**

Any non-conforming structure which was lawful before the adoption of this Ordinance may continue to be used as long as it is adequately maintained and does not constitute a public hazard or nuisance, and provided that it is not expanded, extended, enlarged in floor area, or changed in basic structural design and integrity. Non-conforming structures may be improved to an extent not exceeding fifty percent (50%) of the current market value of the existing structure. Nothing in this Ordinance shall prevent the strengthening or restoring to a safe condition of any portion of a building or structure declared unsafe by proper authority. **(Cross references: Section 602.08.4(a); Section 702.05.01(a) and Section 707.08-A)**

#### **1302.01-A Termination of Non-Conforming Structure:**

Any non-conforming structure which is partially destroyed or damaged by fire, accident, or natural causes beyond sixty percent (60%) of its current market value shall thereafter conform to the regulations of this Ordinance for the district in which it is located.

Any non-conforming structure which has been improved and altered to comply with the provisions of this Ordinance shall be considered as conforming.

### **Section 1303-A Non-Conforming Use of Structures and Premises**

Any non-conforming use of buildings and land which was lawful before the adoption of this Ordinance may be continued, and provided further that these regulations shall not be construed to require a change in plans, construction, or designated use of any building or land upon which construction and/or other improvements were lawfully begun prior to the effective date of adoption of this Ordinance.

**1303.01-A Limitations:** A non-conforming use shall not be expanded, extended or enlarged in floor area, or changed to another non-conforming use. Structures housing a non-conforming use may be improved to an extent not exceeding fifty percent (50%) of the current market value of the existing structure.

#### **1303.02A Termination of Non-Conforming Use:**

When use of either the premises and/or structure, in regard to its zoning classification, and not otherwise, ceases for a period of more than six (6) consecutive months, any

subsequent use shall conform to the regulations of this Ordinance for the district in which it is located; unless prior to the expiration of the said six (6) month period, the owner shall have applied to the Zoning Administrator for an extension of the non-conforming status, which extension shall not be unreasonably withheld.

Structures housing non-conforming uses when partially destroyed or damaged by fire, accident, or natural causes beyond sixty percent (60%) of its current market value shall thereafter conform to the regulations of this Ordinance for the district in which it is located. Removal or destruction of the structure beyond sixty percent (60%) of its current market value shall also eliminate non-conforming use of the land, the existence or nonexistence of lease obligations, as well as any contingency clauses therein permitting termination of such lease.

#### 1303.03-A Amortization of Non-Conforming Use:

Any adult arcade, adult bookstore, adult cabaret, adult entertainment establishment, adult motel, or adult motion picture theater, as defined in this Ordinance, in existence at the time of adoption of this Ordinance which violates or does not conform to the provisions hereof (hereafter, a "pre-existing, non-conforming business") shall conform to the provisions of this Ordinance within a period of three (3) years from said adoption of this Ordinance.

The City Planning Board may grant an extension of time for continued operation after the conclusion of this grace period if the owner of the pre-existing, non-conforming business proves that he is unable to recoup his investment in such enterprise by that date. In order to secure an extension of time, the owner must submit to the City Planning Board a written request for such extension at least sixty (60) days prior to the expiration of the three (3) year grace period. No application for extension received by the City Planning Board after such time shall be considered. This information shall be supported by relevant documentary evidence such as financial statements and tax records. Copies of such documentary evidence must be attached to the request for extension, and refusal or failure to provide this information as required shall constitute a waiver of the right to seek an extension of time in which to operate.

Such written request shall set forth the following information:

- a. The amount of the owner's investment in the pre-existing, non-conforming business through the effective date of this Ordinance;
- b. The amount of such investment that has been or will have been realized at the conclusion of the three-year grace period;
- c. The life expectancy of the existing enterprise;
- d. The existence or nonexistence of lease obligations, as well as any contingency clauses therein permitting termination of such lease.

The City Planning Board shall notify an applicant for an extension of time of the time and place of a hearing to be held on such request before the City Planning Board. After such hearing, the City Planning Board shall issue a written order on the request for extension. If the owner desires to appeal the City Planning Board's order, said appeal may be taken by following the procedures for appeal to the City Council pursuant to the provisions of the Zoning Ordinance of Jackson, Mississippi, as amended. Extensions that are granted shall specify a date certain for closure, and shall not be valid for operation at any other location.

1303.04-A Catastrophic Provision: In the event of a natural disaster of catastrophic

proportions, non-conforming uses may be continued, where such continuance is declared to be in the public interest by the City Council, though existing structures and other improvements on the premises of the non-conforming use have suffered damages exceeding sixty percent (60%) of their market value.